

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
BRIAN THOMAS JANOSKI

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MREC

Brian Thomas Janoski (Janoski) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Janoski's license as a real estate salesperson, no. 2004027167, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2012. The MREC and Janoski jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Janoski acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Janoski may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Janoski knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Janoski acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Janoski stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Janoski's license as a real estate salesperson, no. 2004027167, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Janoski in Part II herein is based only on the agreement set out in Part I herein. Janoski understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Janoski herein jointly stipulate to the following:

1. Janoski holds a Missouri real estate salesperson license, no. 2004027167.
2. Janoski's license is not current or active, because Janoski's license was returned by his broker on or about March 15, 2012. Janoski did not transfer his license to another broker or place it on inactive status. Janoski's license expired on September 30, 2012, and he has not taken the required steps to renew his license.
3. On December 3, 2012, Janoski pled guilty in the Circuit Court of St. Louis County, Missouri ("the court"), Case No. 12SL-CR04924-01 ("criminal case"), to the class C felony of stealing, in violation of § 570.030, RSMo Supp. 2012.

4. The charges underlying the criminal case stated in relevant part:

That Brian Janoski in violation of Section 570.030 RSMo committed the class C felony of stealing punishable upon conviction under Sections 558.011 and 560.011 RSMo in that on or between March 3[,] 2012 at 12[:]40 PM and March 3[,] 2012 at 4[:]30 PM at 650 Hickory Lane in the County of St Louis[,] State of Missouri[,] the defendant appropriated jewelry of a value of at least five hundred dollars which property was in the possession of Kathrine Lamkin and defendant appropriated such property without the consent of Kathrine Lamkin and with the purpose to deprive her thereof[.]

5. Section 570.030, RSMo Supp. 2012 regarding the criminal offense of stealing, states in relevant part:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

...

3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:

(1) The value of the property or services appropriated is five hundred dollars or more but less than twenty-five thousand dollars[.]

6. On January 25, 2013, the court sentenced Janoski to one year of incarceration, but suspended execution of the sentence and placed Janoski on probation for five years. The court also ordered Janoski to pay restitution to Kathrine Lamkin in the amount of \$1974.19, abstain from alcohol, undergo

substance abuse treatment and psychological evaluation and follow all recommendations, complete a Pathways to Change program, complete forty hours community service, serve ten days shock time, and have no contact with the victim.

7. Section 339.100.2, RSMo Supp. 2012, authorizes the MREC to file a complaint with the Administrative Hearing Commission and states, in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

8. Section 339.040.1, RSMo Supp. 2012, relating to license

requirements, provides:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

. . .

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

9. By pleading guilty to the class C felony of stealing and engaging in the conduct underlying that crime, Janoski demonstrated that he lacks good moral character, which is a ground for the MREC to refuse to issue a license under § 339.040.1(1), RSMo, providing cause to discipline Janoski's license pursuant to § 339.100.2(16), RSMo Supp. 2012.

10. By pleading guilty to the class C felony of stealing and engaging in the conduct underlying that crime, Janoski also demonstrated that he is not competent to transact the business of a salesperson in such a manner as to safeguard the interest of the public, which is a ground for the MREC to refuse to issue a license under § 339.040.1(3), RSMo, providing cause to discipline Janoski's license pursuant to § 339.100.2(16), RSMo Supp. 2012.

11. By pleading guilty to the class C felony of stealing, Janoski pled guilty to an offense reasonably related to the qualifications, functions or duties of a real estate salesperson, an essential element of which is fraud,

dishonesty or an act of violence, and an offense involving moral turpitude, providing cause to discipline Janoski's license pursuant to § 339.100.2(18), RSMo Supp. 2012.

12. Cause exists to discipline Janoski's salesperson license pursuant to § 339.100.2(16) and (18), RSMo Supp. 2012.

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

1. **Janoski's license is revoked and all indicia of licensure shall be surrendered immediately.** Janoski's license as a real estate salesperson is hereby REVOKED and ALL INDICIA OF licensure SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

2. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Janoski of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

3. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

4. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

5. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

7. Janoski, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees

and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

8. Janoski understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Janoski's license. If Janoski desires the Administrative Hearing Commission to review this Settlement Agreement, Janoski may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

9. If Janoski requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for

disciplining Janoski's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Janoski as allowed by law. If Janoski does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

MISSOURI REAL ESTATE
COMMISSION


BRIAN THOMAS JANOSKI

Date: 11/11/13


JANET CARDER, Executive Director

Date: 11/19/13

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